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NAVAL WAR COLLEGE

# INTERNATIONAL LAW

SITUATIONS

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1897

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GOVERNMENT PRINTING OFFICE  
1898.



*Confidential*

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# NAVAL WAR COLLEGE.

## INTERNATIONAL LAW.

### SITUATION NO. 1—1897.

The Greek population of Crete is in a state of insurrection against the Turkish Government, and the insurgents are being actively assisted by the Government of Greece. The six great powers of Europe have resolved upon concerted action in order to prevent, if possible, the conditions in the island of Crete from bringing on a general war. They have agreed to enforce a blockade of the island to prevent supplies of all kinds from being sent to the insurgents. A notification to this effect has been received by the Government of the United States, which has neither recognized nor given official notice of this blockade.

An American steamer, the *Kensington*, lying in the Pireus, has been chartered by Greek merchants, loaded with provisions for the insurgents, and has sailed for Khania, where the United States naval force of 4 protected cruisers is anchored, together with 12 battle-ships and 10 cruisers representing all of the six powers. Upon nearing the harbor the *Kensington* is boarded by an officer representing the commander in chief of the forces of the six powers and warned that he will not be permitted to land his cargo anywhere on the island.

The commander of the *Kensington* visits the flagship of the United States squadron and asks what her international rights are, and requests advice. What are her rights and what advice should be given?

2. On the day following the arrival of the *Kensington* at Khania her commanding officer weighs anchor, steams to Retimo, which is in possession of the insurgents, and

in attempting to land the cargo at a point on the coast near Retimo is first fired upon by the ships representing the six powers and is afterwards taken possession of. Six hours after this occurrence information reaches the United States admiral that the *Kensington*, in attempting to land her cargo near Retimo, was fired upon by ships of the six powers, her captain and two seamen killed by the fire, six of the crew wounded, and that the ship had been captured by the ships representing the six powers, and was then steaming toward Khania convoyed by six protected cruisers—one Italian, one German, two English, one French, and one Russian.

Under these circumstances, what are the duties of the United States admiral?

#### DISCUSSION.

The blockade of Crete by the six powers can only be justified as an instance of *pacific blockade*, which is characterized by Snow (p. 79) as “a growing means of coercion short of war,” the practice of which “seems fairly well established.”

Writers on international law are divided on this question and may, according to Mr. Thomas Barclay, an English lawyer of high repute, be classified as follows:

First. Those who think the *pacific blockade* absolutely unjustifiable—Hautefeuille, Westlake, Geffcken, Woolsey.

Second. Those who approve the practice as a necessary evil, on the condition it is so conducted as not to affect third states—De Martens, Calvo, Bluntschli.

Third. Those who admit the practice as at all events a less evil than war, and who believe that the blockade should affect third states—Perels, Des Jardens, and others.

In 1887 the *Institut de Droit International* adopted a declaration as to *pacific blockades*, which stated (Snow, p. 80) that the establishment of a blockade without a state of war ought to be considered permissible by the laws of nations only under the conditions that vessels of foreign flags can enter freely, notwithstanding the

blockade; that the pacific blockade be formally declared and notified and maintained by sufficient force, and that vessels of the blockaded nation which do not respect the blockade can be sequestered; but that when the blockade ceases these vessels and their cargoes should be restored to their owners, but without compensation.

Hall says (p. 340 et seq.): "The real question then is whether a state in time of peace can endeavor to obtain redress from a second state for actual or supposed injuries by means which inflict loss or inconvenience on other countries. Lord Palmerston at any rate thought not. In writing to Lord Normanby, the ambassador at Paris in 1846, with reference to the blockade of La Plata, he said, 'The real truth is, though we had better keep the fact to ourselves, that the French and English blockade of the Plata has been from the first to last illegal. Peel and Aberdeen have always declared that we have not been at war with Rosas; but blockade is a belligerent right, and unless you are at war with a state you have no right to prevent ships of other states from communicating with the ports of that state; nay, you can not prevent your own merchant ships from doing so.'"

Woolsey says (p. 443): "The right of blockade is one affecting neutrals, and a new kind of exercise of this right can not be introduced into the laws of nations without their consent, \* \* \* and neutrals have not given their consent to this new form of restriction of their rights. They would, if such a practice were continued, regard a pacific blockade as an act of war under a wrong name, or claim damages for all injury thereby inflicted on their commerce, which only war rights can interfere with."

Walker says (Snow, p. 79): "If it (pacific blockade) be confined to the subjects of the parties directly engaged its legitimacy can hardly be a matter for serious consideration. The less is justified in the greater, and the blockaded sovereign has it in his power either to free himself from the inconvenience by the grant of redress or to resent it by the declaration of war.



"If, however, the trade of neutrals be affected by the blockade, those neutrals may well protest against interference with their traffic not fully and completely justifiable. For them such a protest must be a matter of policy."

Glass says (p. 458): "Neutrals would not to-day submit to restrictions placed upon their trade by measures of blockade, unless instituted in the prosecution of open declared war."

Pacific blockades were unknown prior to 1827. Since that time they have been declared by both England and France, and at different times by one or more of the powers, France, Germany, Russia, Austria, and Italy acting in concert with Great Britain.

The French blockade of Mexican ports in 1838 extended to vessels of other nations. Mr. Vail, Acting Secretary of State of the United States, in a letter to Mr. Pontois, under date of October 23, 1838, says: "In the absence of rules in relation to blockades in time of peace, those applicable to blockades in time of war are the only ones according to which the case of the *Lone* is to be considered."

The joint blockade of the Plata by the English and French (1845-1848) extended to vessels of other nations. The opinion of Lord Palmerston, then minister of foreign affairs, regarding the legality of this blockade has already been quoted.

The French blockade of Formosa in 1884 was intended to include vessels of other nations, but Great Britain refused to admit that the French Government had the right in international law to capture and condemn the vessels of other nations.

The blockade of Greece in 1886, by Great Britain, Germany, Russia, Austria, and Italy, judging from the instructions given to the British admiral (Snow, p. 80), extended only to the vessels of the powers interested, and even these vessels under certain conditions went free when carrying cargo belonging to citizens of other nations.

It is thus evident that the right to maintain a blockade



in time of peace and to extend its operations to the vessels of a third state is not as yet recognized by international law. Such a blockade can only be operative against a third State by its *expressed consent*, and it does not seem reasonable to hold that such consent can be implied from an omission on the part of the third state to formally protest, in each and every case, before direct injury to its interests has occurred or been threatened.

The letter of Assistant Secretary of State Vail, which is held by some to define the position of the United States with reference to pacific blockades in general, should rather be looked upon as an exposition of the rules which, in his opinion, should be applied to the particular case of blockade with which he was dealing, and to which, though outside the existing and then recognized rules of international law, the United States, for reasons of policy, was willing to assent. The expression "In the absence of rules in relation to blockades in time of peace," etc., is significant. If the principle involved was at that time well established, certainly the rules governing its application would have been equally well understood and not *absent*.

#### THE KENSINGTON CASE.

##### I.

Not having been notified of the blockade of Crete by his own Government,\* the United States admiral should advise the master of the *Kensington* that while as a pure question of international law he had the right to unmolested entry into any port of the island, yet, having in view the dominating influence which the six powers have always exercised, without question on the part of the United States, in the affairs of the Levantine nations, more especially in those of Greece and Turkey, and the fact that the blockade, practically directed against Greece, is maintained by the six powers acting

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\* It is the practice of the United States Government to notify the commanders of the United States naval forces of blockades established by other nations within the limits of the stations to which such forces are assigned.

in concert, it would be unadvisable for him to assert this right by attempting to force the blockade. His better course would be to protest to the officer commanding the blockading forces against the interference with his voyage; to inform that officer that he will report the case to the United States Government, and ask that steps be taken to procure suitable reparation for the damages to himself and his owners resulting from this illegal interruption of the *Kensington's* voyage, and finally to demand that the fact that he protests, together with the fact that he was warned off, be entered on the *Kensington's* log over the signature of some responsible officer of the blockading forces.

## II.

Being satisfied of the facts, the duty of the United States admiral is to demand from the commanding officer of the blockading forces the immediate restoration of the *Kensington*, informing him that the facts of the case will be reported to the United States Government for such action as it may deem proper with reference to the loss of life and other damages which have resulted from his action in firing upon and seizing the vessel.

Up to this point the staff of the college, believing that the *Kensington* was clearly within her legal rights in attempting to force the blockade, is practically unanimous,\* but as to what should be the subsequent action of the United States admiral they are not agreed.

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\* It is held by some, however, that a blockade in time of peace is now a recognized means of securing redress; that its operation rightly extends to vessels of third states; that the captain of the *Kensington* should be advised that an attempt on his part to disregard the blockade would justify the seizure of his vessel; that after the capture of the *Kensington* the United States admiral should relieve, as far as possible, the suffering on board the vessel, insist on the most humane treatment of her crew by the captors, demand a fair and speedy trial of the case before a proper prize court, and finally that he should secure all the evidence obtainable, report the matter at once to the home Government, and await instructions.

Some hold that, in case the demand for the restoration of the *Kensington* is not promptly complied with, the United States admiral should endeavor to take possession of the vessel, using force if necessary, even though this course should involve the destruction of his entire command. The Government at Washington having had an opportunity to recognize the validity of the proposed pacific blockade and having failed to do so, the American admiral would go beyond his powers if he should assume to pronounce upon a question of policy for which the President alone is responsible to the country, and should himself admit the validity of the action of the six powers. Until otherwise instructed his duty is to deny it by word and deed.

Others, while admitting that the capture of the *Kensington* was an undoubted infringement of the rights of an American vessel and that her recapture by force would be justifiable and under certain conditions obligatory, believe that in the case under consideration an attempt to take the vessel would fail, would aggravate the situation, might lead to war, and would be inexpedient.

The six powers are responsible civilized governments. Their position, that of France excepted, with reference to pacific blockades and the rights of the vessels of non-interested states thereunder is sufficiently indicated by the instructions to the British admiral for the conduct of the blockade of Greece in 1885. The position of Great Britain is further shown in the stand taken by that nation in reference to the French blockade of Formosa in 1884 and by Lord Palmerston's dictum regarding the blockade of the Plata, 1845-1848.

The United States admiral is therefore justified in assuming that proper reparation can be secured through the ordinary channels of diplomacy. This being granted, an attempt on his part to recapture the vessel would be taking, unnecessarily, a very serious responsibility. His action should not go beyond the demand for the restoration of the vessel, coupled with the intimation that the United States Government would exact full indemnity for the loss of life and damage to property.

# INTERNATIONAL LAW.

## SITUATION NO. 2—1897.

A Japanese squadron of three protected cruisers, with a commissioner, has arrived at Honolulu in consequence of the refusal of the Hawaiian Government to permit an ever-increasing number of Japanese emigrants to land. These emigrants have certificates from the Imperial Japanese Bank at Tokyo to show that they have on deposit in Japan the amount of money which is required by the Hawaiian Government in accordance with the terms of a treaty. This monetary exaction by Hawaii is for the purpose of preventing the transportation of an unlimited number of undesirable Japanese emigrants either as paupers or soldiers, the Hawaiian Islands being in a defenseless condition. The Hawaiian Government and the Japanese commissioner failing to come to an agreement on the rights of the Japanese under the treaty, the Japanese forces occupy Honolulu.

On the day after this occupation a squadron of three United States protected cruisers appears off the harbor of Honolulu. The commander in chief observes the Japanese flags hoisted over the Government buildings and soon after, before the squadron reaches the entrance to the harbor, receives a written notification from the Japanese admiral that his force has taken possession of Honolulu for the purpose of enforcing the treaty rights of his Government, and that the city and surrounding country are under martial law. The Japanese boarding officer at the same time brings the information that the American minister to Hawaii had died on the previous day.

When the United States force had been withdrawn from Honolulu in 1893, the President had stated publicly that no foreign government would be permitted by the United States to take possession of the Hawaiian Islands.

In this position what should the American admiral do; and upon what grounds should he base his line of action?



## DISCUSSION.

The action of the Japanese in landing upon the Hawaiian Islands and forcibly occupying Honolulu was unwarranted and an indignity to both the Hawaiian Republic and to the United States, whose relations to the islands, both under the republic and the former monarchy, have amounted to a virtual protectorate over them.

The Hawaiian Government, viewing with alarm the influx of Japanese emigrants, and believing, putting aside the suspected military character of the emigrants, that their number alone constituted a grave menace to Hawaiian institutions and might eventually endanger the very existence of the Government, had, as a measure of self-protection, the right to refuse admission to Japanese emigrants. The right of self-protection is a fundamental one for States as well as for individuals, and in an exigency easily may rise above any technical treaty stipulation.

The position of the United States with reference to the Hawaiian Islands has been tacitly recognized by other nations, and is amply shown in treaties and other state papers.

In 1851, Mr. Webster, then Secretary of State, informed the Hawaiian Government that, "The Navy Department will receive instructions to place and to keep the naval armament of the United States in the Pacific Ocean in such a state of strength and preparation as shall be requisite for the preservation of the honor and dignity of the United States and the safety of the Government of the Hawaiian Islands. In 1849 a treaty was made with the Hawaiian Islands of friendship, commerce, and navigation. In 1875 another treaty was made establishing reciprocal trade relations, which treaty, in Article IV, contains the following words: "It is agreed, on the part of His Hawaiian Majesty, that so long as this treaty shall remain in force, he will not lease or otherwise dispose of or create any lien upon any port, harbor, or other territory in his dominions, \* \* \* to any other power, state, or government, \* \* \*." In

1881 Mr. Blaine, then Secretary of State, in a dispatch to the United States minister resident at Honolulu, which dispatch it was ordered should be shown to the Hawaiian Government, said: "But under no circumstances can the United States permit any change in the control of either (Hawaii or Cuba) which would cut it adrift from the American system, whereto they both indispensably belong."

That negotiations for the annexation of the Hawaiian Islands to the United States have been entered upon in the past, that there is every probability that these negotiations will be resumed, and the President's declaration in 1893 that no foreign government would be permitted by the United States to take possession of the Hawaiian Islands, are matters of common fame, and were presumably well known to the Japanese. Under the circumstances, the action of the Japanese admiral was not only an invasion of the rights of a country linked closely to the United States, but was also an act of unfriendliness to the United States itself, a practical violation of its treaty rights, and an affront to its honor and dignity.

Compelled by the death of the diplomatic representative of the United States to act alone, the American commander in chief should notify the Japanese admiral that his unwarranted occupation of Hawaiian territory can not be allowed to continue; that all such territory must at once be restored to the Hawaiian Government; that the Japanese forces must be withdrawn from the shore, and that if, at the expiration of twenty-four hours, these demands have not been complied with, he will be constrained to enforce them, using all the means at his command.

Article 285, Navy Regulations, 1896, provides that "on occasions where injury to the United States \* \* \* is committed or threatened, in violation of the principles of international law or treaty rights, he (the commander in chief) shall \* \* \* take such steps as the gravity of the case demands." \* \* \*

Article 286 also justifies the use of force in this case, under the right of self-preservation.



## INTERNATIONAL LAW.

### SITUATION NO. 3—1897.

The continued massacre of Armenians in Asiatic Turkey has resulted in grave fears of a general crusade against Christians in the Turkish Empire. A United States squadron of four protected cruisers has been stationed on the Syrian coast and at this time is at anchor in Besika Bay.

The six great powers have agreed that the Dardanelles shall be closed to ships of war of all nations, and the Turkish Government has acquiesced in this decision. It has been the custom in the past for the commanding officers of American ships of war who wish to visit Constantinople to first obtain a "firman," and permission has always been restricted to dispatch vessels or to third rates.

The admiral commanding the United States squadron is notified by the American minister at Constantinople that three American missionaries, who have come to Constantinople from the interior for safety, have been killed by a mob which is practically in possession of the city; that he has been warned that an attack will be made upon the United States legation, and that, in such an event, he fears the worst; because, from his own experience and observation, he has no confidence in the assurances of protection which he has from the Turkish Government. The minister also states that the land telegraph wires have been cut and that he has not been able to communicate with Washington. The admiral knows that there is a break in the cables of the Eastern Telegraph Company, which has a station at Besika Bay, and that there is no likelihood of its being repaired for two days. The Turkish Government has already refused him permission to visit Constantinople in any one of the ships of his command.

Under such circumstances, what are the rights of the United States, and what would be the duty of the commanding officer of its naval forces in the Mediterranean?

## DISCUSSION.

Justice Miller, of the Supreme Court of the United States, in his decision in the Slaughter House Cases, says: "Another privilege of a citizen of the United States is to demand the care and protection of the Federal Government over his life, liberty, and property when on the high seas or within the jurisdiction of a foreign government. Of this there can be no doubt, nor that the right depends upon his character as a citizen of the United States."

The protection of American citizens abroad is put by the Navy Regulations (art. 286) under the fundamental right of self-preservation, which includes "the protection of the State, its honor, and its possessions and the lives and property of its citizens against arbitrary violence, actual or impending, whereby the State or its citizens may suffer irreparable injury."

As a general rule, the prevention of impending or the redress of actual injury to a state or to its citizens at the hands of another state should be sought through the ordinary channels of diplomacy. When, however, the offending state presumably is unwilling, or, by reason of the weak or unstable character of its government, unable, to afford the proper measure of protection or redress, or when the anticipated injury is imminent, then the presence of men-of-war of the threatened or injured state is most useful, and may be imperatively necessary, to give moral strength and tone to the requests and demands of its diplomatic and consular officers, to prevent violence and offer refuge to its citizens, and to take such action as may be ordered by their government for securing immediate and proper redress.

There is nothing in a diplomatic way, except the agreement of the six great powers of Europe, to which the United States never acceded (see Snow's lectures, p. 30), to prevent the naval force of the United States proceeding at once to Constantinople and there performing its manifest and urgent duty of protecting

American citizens, officials, and property. While preparing to leave for Constantinople and to force the passage of the Dardanelles, if necessary, the United States admiral should arrange for the conveyance of the news of his proposed action and intentions in the most expeditious manner possible to the home government, and as the six great powers are responsible to a large extent for the condition and conduct of Turkey, the facts of the outrages should be communicated to the senior admiral of the combined naval forces of the powers for his information.

Arriving at Constantinople, without delaying to communicate in any way with the Turkish Government, the force under the American admiral should be disposed on shore and afloat at once so as to offer the greatest protection and refuge possible to the officials of the United States, the legation, and to all citizens, and so far as possible to their property. It is to be presumed that the United States minister has communicated with the Turkish authorities and demanded from them proper and complete protection for the legation, and for the lives and property of our citizens.

Indemnity and punishment for what has happened before the arrival of the United States forces at Constantinople is a matter to be determined by the Government and not by the admiral.

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## INTERNATIONAL LAW.

### SITUATION NO. 4—1897.

The Nicaragua Canal having been finished, the United States has guaranteed by treaty with Nicaragua "the perfect neutrality" of the territory through which the canal passes in order "that the free transit from the one to the other sea" shall not be interrupted nor embarrassed; and in consequence the United States has also guaranteed "the rights of sovereignty and property which Nicaragua has and possesses" over the territory.

A revolution breaks out in that State. The country from the eastern entrance of the canal to Lake Nicaragua is controlled by the revolutionists, who, although not recognized by the representatives of any foreign state, have established forms of local government. The rest of Nicaragua is in possession of the regularly constituted government, which is preparing a force to attack the insurgents. The armored cruiser *Brooklyn* is lying off Greytown, with the German cruiser *Kaiserin Augusta* at anchor a mile farther out. The North German Lloyd steamer *Kaiser Wilhelm* has entered the canal with cargo for ports in Nicaragua and on the Pacific coast of Central and South America.

A few hours after the German steamer has entered the canal and while she is still secured to the quay opposite the canal company's offices discharging cargo, her flag is seen to be at half-mast with the stripes inverted.

An officer is sent from the *Brooklyn* to find out the reason why this distress signal had been hoisted, but he does not return. In half an hour a canoe with the first officer of the *Kaiser Wilhelm* is reported to be alongside the *Brooklyn*. He tells the captain of the *Brooklyn* that the consul of the United States, also acting as the German consul, had gone to the *Kaiser Wilhelm* upon being informed that the insurgents, numbering 125 armed men, were about the ship, and that the hold was being searched for boxes of rifles and ammunition which the insurgent leader, who was the head of the revolutionary government, insisted were consigned to or intended for the Government of Nicaragua at Managua. Upon the consul protesting against this action of the insurgents, both he and the officer sent from the *Brooklyn* were seized and forcibly taken to a station on the canal 3 miles from Greytown. This statement of the *Kaiser Wilhelm's* first officer is confirmed by a note from the United States consul to the captain of the *Brooklyn*, in which he added that the insurgent leader had threatened to put him and the officer of the *Brooklyn* to death in case any action were



taken by the American captain against the revolutionists.

After the delivery of the note and the message, the first officer left the ship and pulled toward the *Kaiserin Augusta*.

What rights has the United States under the treaty with Nicaragua, and what is the duty of the commanding officer of the *Brooklyn*?

#### DISCUSSION.

The treaty between the United States of America and Nicaragua relating to the Nicaragua Canal is comparable with the treaty between the former Government and the United States of Colombia with reference to the transit of the Isthmus of Panama, the distinction being that one relates to a water and the other to a land route.

As the United States guarantees the "perfect neutrality" of the territory through which the canal passes in order "that the free transit from sea to sea shall not be interrupted nor embarrassed," the consequent obligations rest upon that Government alone. In this case, as in that of the Panama Railroad, other nations look to the United States to keep the transit open, and when from any cause the interruption is threatened or occurs, take action themselves only in the absence of United States forces.

Under these conditions, although the *Kaiser Wilhelm* is a German vessel, it is the duty of the captain of the *Brooklyn* to see that her passage through the canal is not interfered with, and this without regard to the nature of her cargo. If he deems the force at his command inadequate for that purpose, he may invite the cooperation of the *Kaiserin Augusta*, but should do so only in case of necessity. On the other hand, in the absence of the United States forces, the commanding officer of the German cruiser has the general right to take action, as the English have done heretofore at Panama. The captain of the *Brooklyn* should land a force, expel the searching party of the insurgents from

the *Kaiser Wilhelm*, protect that vessel from further interference with her voyage, and rescue the United States consul and the *Brooklyn's* officer. He should also take possession of the portion of the canal within the region of the operations of the insurgents and hold it until peace and order are restored by the regular Government of Nicaragua. A patrol of the canal, by launches, for the purpose of convoying vessels and preventing interference with them or the canal would be advisable.

Under its treaty with Nicaragua, the United States can not permit operations on the part of the insurgents that interfere with the passage of vessels or merchandise—arms and military stores not excepted—through the canal, and is bound to maintain a perfectly free transit. The latter duty may involve garrisoning the route of the canal, or, in an extreme case, military operations against the insurgents.











